Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	)	GN Docket No. 17-142
	)	
	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile")[1/] submits these reply comments in response to the *Notice of Proposed Rulemaking* in the above-referenced proceeding on potential ways to increase competition and improve broadband service to Multiple Tenant Environments ("MTEs").[2/] The record in this proceeding shows that the Commission should prohibit carriers from participating in agreements that limit competition and undermine the Commission's efforts to speed the deployment of wireless broadband to all Americans.

I. INTRODUCTION AND SUMMARY

As the Commission has noted, MTEs represent some of the most important and most difficult places for wireless carriers to serve,[3/] and the record in this proceeding supports that conclusion. Commenters described the importance of competitive access to distributed antenna systems ("DAS"), small cells, and rooftop antenna deployments to provide wireless service within MTEs and to surrounding areas.[4/] Commenters also detailed the roadblocks they face in

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1/ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

2/ *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 19-65 (rel. July 12, 2019) ("*NPRM*").

3/ *Id.* ¶ 1.

4/ *See, e.g.*, Comments of Sprint Corporation, GN Docket No. 17-142, at 1 (filed Aug. 30, 2019) ("Sprint Comments") (describing how "large public venues" are difficult to serve with traditional deployments and explaining the need to use DAS to solve this problem); Comments of Starry, Inc., GN Docket No. 17-142, at 11 (filed Aug. 30, 2019) ("Starry Comments") (noting that "our business depends on the ability to place transceivers located on the roof of an MTE").

implementing the necessary infrastructure in these locations, to the detriment of competition and, ultimately, to customers.[5/]

T-Mobile therefore urges the Commission to prohibit carriers from participating in arrangements that hinder wireless deployments in MTEs, whether for DAS, carrier small cells, or transport, and whether installed inside an MTE or on its roof. As discussed below, this should also include agreements between carriers and third-party infrastructure managers who have, in turn, entered into restrictive agreements with property owners. The Commission has clear authority to impose these prohibitions, consistent with its authority to ensure that carriers do not act in an unjust or unreasonable manner and to encourage competition in the provision of wireless service.

II. THE RECORD IN THIS PROCEEDING MAKES CLEAR THAT RESTRICTIVE AGREEMENTS IMPEDE SERVICE COMPETITION TO MTEs

The record shows that T-Mobile's concerns about MTE access are not unique. Commenters make clear that restrictive terms in agreements governing carrier access to MTEs prevent competition in limiting access to infrastructure, entrenching monopolies, harming competition, and disadvantaging consumers.[6/] As the Commission has noted, promoting competition has been a touchstone of decades of regulation,[7/] and commenters agree that

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[5/] *See, e.g.*, Sprint Comments at 4-8 (explaining why many fees for DAS access are too high to justify attachment); Starry Comments at 11 (describing exclusivity agreements as a "marketplace failure" that inhibit competitive access to MTEs).

[6/] *See, e.g.*, Comments of CenturyLink, GN Docket No. 17-142, at 6-12 (filed Aug. 30, 2019) ("CenturyLink Comments") (explaining how high fees and *de facto* exclusivity agreements prevent it from competing and undermine consumer choice); Sprint Comments at 2-4 (describing "opportunistic behavior," which limits deployment options for carriers and undermines smaller carriers' ability to compete).

[7/] *NPRM* ¶ 3 ("For decades, congressional and Commission policy has reflected an overarching principle: encouraging facilities-based competition by broadly promoting access to customers and infrastructure, including MTEs and their occupants.").

achieving this goal in today's marketplace requires the application of existing MTE rules to wireless services. For example, Starry notes that incumbent carriers use deployment barriers to warp markets in their favor, reducing competition from and between wireless carriers and, ultimately, harming consumers.[8/] Public Knowledge argues that "[restrictive] agreements stifle competition and have negative consequences for consumers."[9/] The Wireless Internet Service Providers Association ("WISPA") notes that wireless carrier competition from increased MTE access brings "the benefits of lower rates and increased services" to consumers.[10/] And Uniti Fiber explains that allowing greater access to DAS in MTEs will increase competition and spur the offering of advanced services.[11/]

Similarly, Sprint presents in detail how its ability to connect to DAS in MTEs is limited by restrictive agreements, increasing its costs, undermining its ability to compete, and harming consumers.[12/] INCOMPAS also notes that the lack of competition in serving MTEs is acute and that agreements between property owners and carriers harm consumers.[13/] The Competitive Carriers Association ("CCA") expressed similar concerns on behalf of its members, noting that

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8/ Starry Comments at 7.

9/ Comments of Public Knowledge and New America's Open Technology Institute, GN Docket No. 17-142, at 9 (filed Aug. 30, 2019) ("Public Knowledge Comments"). While Public Knowledge does not explicitly suggest applying these rules to wireless service, it generally opposes all exclusive agreements.

10/ Comments of Wireless Internet Service Providers Association, GN Docket No. 17-142, at 13 (filed Aug. 30, 2019) ("WISPA Comments").

11/ Comments of Uniti Fiber, GN Docket No. 17-142, at 9 (filed Aug. 30, 2019) ("Uniti Fiber Comments").

12/ Sprint Comments at 2-8.

13/ Comments of INCOMPAS, GN Docket No. 17-142, at 3-12 (filed Aug. 30, 2019) ("INCOMPAS Comments").

carriers may be prevented from accessing an MTE due to restrictive agreements or, if they do gain access, cannot offer the latest services due to outdated equipment.[14/]

Commenters also note that exclusive agreements can take the form of frequency limitations, excessive fees, mandates that carriers use existing equipment rather than their own, and burdens on subsequent entrants to pay the entire cost of upgrades to add their equipment that also benefit the incumbent and all other users. CenturyLink describes how high fees act as a functional bar on access.[15/] Sprint explained how "plug in" fees for DAS access are often an insurmountable burden to smaller carriers and how even though it may theoretically have access to some venues, it functionally does not. It also explained how the requirement for subsequent carriers to use an existing DAS and, if necessary, to bear the full cost of upgrades to add new frequencies, even if Sprint does not utilize that spectrum, undermines its ability to compete.[16/]

These comments demonstrate that the Commission must look beyond explicit exclusivity terms to a range of contractual provisions that restrict access or impede the provision of service. Those terms, regardless of the words used to describe them or the mechanism by which they function,[17/] can serve as a barrier to entry for competition and calcify monopolies. As the Commission has recognized, a business practice need not impose literal "exclusivity" to have these negative effects.[18/]

14/ Comments of Competitive Carriers Association, GN Docket No. 17-142, at 2-3 (filed Aug. 30, 2019) ("CCA Comments").

15/ CenturyLink Comments at 6-8.

16/ Sprint Comments at 2-5.

17/ For example, the Wireless Infrastructure Association ("WIA") attempts to distinguish between "exclusivity" and "management" agreements, but the anticompetitive impact of these restrictions on carriers' ability to freely negotiate with property owners is the same and should be treated the same. Comments of Wireless Infrastructure Association, GN Docket No. 17-142, at 10-11 (filed Aug. 30, 2019) ("WIA Comments").

18/ *NPRM* ¶¶ 16-20 (seeking comment on revenue sharing agreements as potentially "reduc[ing] incentives for building owners to grant access" and "preventing providers from deploying broadband

Commenters who assert that the market for wireless access to MTEs is "functioning well" are simply incorrect.[19/] An inefficient, anticompetitive marketplace may be financially beneficial for some participants, but that does not mean it is operating in a "just and reasonable" way or in a way that it is in the public interest.

III. THE COMMISSION SHOULD PROHIBIT CARRIERS FROM ENTERING INTO RESTRICTIVE ARRANGEMENTS

The type of business practices described above that restrict other carriers from deploying services to an MTE, other than those actually necessary to protect incumbent networks, should therefore be prohibited by the Commission in the same way they are prohibited for wireline service providers. In particular, the Commission should prohibit carriers from entering into agreements with property owners that restrict competition and therefore unfairly allow them to realize first-mover benefits and monopoly status.

As noted above, these proscriptions must apply beyond arrangements that on their face require exclusivity, but also to those that limit subsequent carriers' deployment rights, force them to use a pre-existing DAS, or require exorbitant fees to attach to existing infrastructure or add new frequencies. Regardless of *how* the agreements operate, the record in this proceeding makes clear that the Commission should act to promote competition and no longer allow carriers to enter into agreements that include restrictive, anti-consumer terms.

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services on a timely basis," as well as being a way "to circumvent the ban on exclusive access arrangements"); *id.* ¶¶ 24-29 (seeking comment on sale-and-leaseback agreements and other, non-exclusive, "contractual provisions and non-contractual practices . . . that impact the ability of broadband . . . providers to compete in MTEs").

19/ Joint Comments of National Multifamily Housing Council *et al.*, GN Docket No. 17-142, at 53-67 (filed Aug. 30, 2019) ("National Multifamily Housing Council *et al*. Comments"); WIA Comments at 13.

Commission action prohibiting these restrictive agreements will have three positive effects. *First*, carriers will be able to serve customers where they cannot today, increasing competition and consumer choice. *Second*, costs will be lowered for providing service to MTEs, facilitating broader and quicker deployment, particularly in lower-margin areas.[20/] *Third*, it will conform the Commission's MTE access rules for wireless services to those that exist for wired services, promoting competition across service-delivery platforms, an important Commission goal as the markets for wireless and wireline broadband increasingly blur.[21/] T-Mobile agrees with NCTA – The Internet & Television Association that "there is no reason to treat wired and wireless providers differently," and that all MTE regulations should apply to wireless services.[22/] The Commission should apply these prohibitions only to agreements between carriers and property owners entered into after the effective date of its new rules.

IV. THE COMMISSION MUST ALSO PROHIBIT CARRIER PARTICIPATION IN RESTRICTIVE AGREEMENTS INVOLVING THIRD-PARTY INFRASTRUCTURE MANAGERS

In addition to ensuring that agreements between carriers and property owners do not restrict competition, the Commission should prohibit carriers from entering into agreements with third parties that restrict other carriers' ability to compete; in other words, it should prohibit carriers from doing indirectly what they would otherwise be prohibited from doing directly. The damage to competition that restrictive agreements can cause do not evaporate just because the

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20/ CenturyLink Comments at 8 (noting that fees for access often account for 20-30 percent of the cost of serving a customer in an MTE).

21/ *See* Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RESEARCH CENTER (June 13, 2019) https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/ (finding that 20 percent of Americans, and 25 percent of lower-income Americans, use a mobile wireless connection for home broadband access).

22/ Comments of NCTA – The Internet & Television Association, GN Docket No. 17-142, at 12 (filed Aug. 30, 2019) ("NCTA Comments").

problematic terms are not in the agreement to which the offending carrier is a party; in some cases, carriers rely on restrictive terms that are in agreements between building owners and third-party infrastructure managers to achieve the same ends. Third-party control over infrastructure in MTEs should not change the Commission's interest in promoting, and does not change the Commission's authority to promote, competition in the provision of wireless services in MTEs.

A. Restrictive Terms May Not Be in Carrier Agreements, But Still Undermine Competition and Are Contrary to the Public Interest.

Commenters have shown that agreements with third-party infrastructure managers are as problematic as agreements directly between carriers and property owners. For example, Sprint detailed how third-party infrastructure managers charge fees for DAS that are so high that it cannot justify joining the system.[23/] Similarly, the CCA noted that a third-party DAS still presents the competitive concerns of a carrier system if it is not "genuinely open to all comers, the equipment [does not meet] the needs of competitive carriers and their customers, and the fees for access [create] an effective prohibition to competition."[24/]

An underlying agreement between the infrastructure manager and the property owner can act to restrict a subsequent carrier from accessing an MTE, to the benefit of incumbent providers already using the infrastructure. Allowing a carrier to indirectly benefit from a restrictive agreement between a building owner and a third-party infrastructure provider distorts the marketplace in the same anticompetitive ways that a direct agreement between a carrier and property owner would.

23/ Sprint Comments at 4-6.

24/ CCA Comments at 4.

Therefore, commenters' claims about the openness of "neutral host" DAS are misleading.[25/] Despite the use of this term, very few third-party infrastructure manager DAS are actually open systems; a true "neutral host" DAS would be designed independently by the third-party infrastructure manager to serve any carrier's network. But in T-Mobile's experience, the vast majority of such DAS are designed to serve the needs of the carrier(s) that signed-on at the time of design.

Thus, the Commission should also prohibit carriers from entering into any agreements that rely on restrictive "upstream" agreements. In other words, even if the agreement to which the carrier is a party (for example, with a third-party infrastructure manager) has no restrictive terms, if the carrier's agreement depends on another agreement (between the manager and the property owner, for example) which *does* include restrictive terms, the Commission should prohibit a carrier from entering into that agreement.

Using an underlying agreement to hide restrictive terms is simply another way that carriers can attempt to restrict entry in all but name. For the Commission to conclude otherwise would permit a carrier to treat an infrastructure manager as its alter ego, direct that infrastructure provider to enter into an exclusive agreement with a property owner, and disclaim responsibility when it enters into an agreement to use the resulting infrastructure on a basis that restricts other carriers' ability to freely negotiate with property owners for access to an MTE.

25/ *See generally* Comments of Boingo Wireless, GN Docket No. 17-142 (filed Aug. 30, 2019) ("Boingo Comments"); Comments of Crown Castle, GN Docket No. 17-142 (filed Aug. 30, 2019) ("Crown Castle Comments"); Comments of ExteNet Systems, Inc., GN Docket No. 17-142 (filed Aug. 30, 2019) ("ExteNet Comments"); WIA Comments.

B. Carrier Agreements that Rely on Restrictive Third-Party Infrastructure Arrangements Are Contrary to the Public Interest.

While the record makes clear that a carrier's agreement with a third-party infrastructure manager can impede broadband deployment and undermine competition through restrictive terms, it makes equally clear that there is no countervailing reason to permit carriers to participate in these arrangements.

First, commenters' claims as to significant capital outlays in the installation of these third-party DAS are misleading[26/] because these funds are generally fully recouped by the DAS operator through capital contributions that are required of the carriers who sign on to use the DAS. It is usually not the third-party infrastructure manager that makes a capital outlay; it is the first-mover carrier(s) that invest the funds and then benefits from the restrictive outcome through its agreement with the manager.

As T-Mobile made clear, reasonable fees charged by third-party infrastructure managers (or carriers operating a DAS) to subsequent carriers that are calculated to recover a fair portion of the costs of design, installation, or ongoing operation of the portion of the infrastructure that the subsequent carrier will use should be permitted.[27/] Those fees are not a means to functionally exclude access by subsequent carriers, but are a means of avoiding free-riders, and thus encourage, rather than discourage, competition and deployment. But excessive rates or charges to use a DAS have the opposite effect, calcifying markets and erecting barriers to entry, harming

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[26/] *See* Boingo Comments at 6-7; ExteNet Comments at 5-6; WIA Comments at 10-12.

[27/] *See also* Comments of Community Associations Institute Comments, GN Docket No. 17-142, at 4 (filed Aug. 30,2019) ("Community Associations Institute Comments") (noting that, where there is "significant expense in" deploying infrastructure, "it is reasonable to take steps to recover the costs of these investments" and that "[t]his can be achieved in an equitable manner"); CenturyLink Comments at 13 ("CenturyLink does not seek to deprive property owners of the opportunity to recover the true costs they incur."); INCOMPAS Comments at 13 ("Arrangements that allow property owners to recover any reasonable costs expended . . . would be allowed. [Agreements], however, should be required to explicitly state that they may not be used to restrict competitive access.").

competition, and hindering deployments. While determining what constitutes a reasonable fee will depend on the specifics of each deployment, many fee structures imposed by carriers and third-party infrastructure managers are manifestly unreasonable and indefensible when compared to cost, and the Commission should act to prohibit carriers from taking advantage of them.

Second, commenters who argue that the Commission must protect third-party DAS from competition in order to encourage their installation[28/] misunderstand the Commission's goal in promoting broadband deployment and ignore the reasons a subsequent carrier might attempt to work around a DAS to deploy their own system. If a DAS installed by a third-party infrastructure manager actually *does* reduce carriers' costs and allow them to serve customers more efficiently, as some commenters claim,[29/] then carriers will use it. In contrast, if a DAS *cannot* stand on its own merits, whether because it does not serve carriers' needs, restricts the use of certain technologies, or if the cost of attaching to a DAS is greater than the installation of a new system,[30/] then the Commission should not protect it.[31/]

Carriers do not deploy infrastructure for its own sake; they would happily attach to a truly neutral DAS that is reasonably priced and allows them to serve their customers. Carriers only seek to deploy their own infrastructure when existing infrastructure does not serve their needs or is too expensive to justify its use.

28/ *See, e.g.*, Boingo Comments at 6-7; ExteNet Comments at 5-6; National Multifamily Housing Council *et al*. Comments at 25; and WIA Comments at 10-12. Those claiming that exclusivity is necessary to encourage deployment of third-party DAS provide no real evidence for this claim; they simply repeat it as if it were fact.

29/ *See, e.g.*, Boingo Comments at 5; WIA Comments at 10.

30/ *See* Sprint Comments at 6 ("In many circumstances, Sprint determines that it could install its own equivalent or superior system for less than it costs to join the DAS [but that] exclusivity contracts typically prevent Sprint from doing so.").

31/ While the Commission should arguably be actively *dis*couraging such inefficient deployments, it certainly should not be *en*couraging them.

Finally, claims by third-party infrastructure managers that their conduct benefits carriers and consumers are belied by the actual terms of these agreements.[32/] Rather than simply seeking to protect their investments and encourage broadband deployment, third-party infrastructure managers instead seek to charge additional fees for DAS use to increase their monopoly rents and undermine competition, for example by imposing additional fees for the use of new frequencies.[33/] These agreements are in fact anti-consumer and benefit no one other than the third-party infrastructure manager and any first-mover carriers that profit from preventing competition from other carriers.

V. PROTECTIONS SHOULD EXTEND TO THE DEPLOYMENT OF SMALL CELLS AND ACCESS TO TRANSPORT FACILITIES

As T-Mobile noted in its comments, it is critical that the Commission clarify that any rules adopted in this proceeding apply to all wireless infrastructure, including carrier small cell deployments and transport to facilities, not simply to DAS. No commenters disagreed with T-Mobile's arguments as to the importance of including these protections in the rules. The rationale for prohibiting restrictive agreements that affect small cell deployments and transport facilities is no different than that for prohibiting restrictive DAS agreements.

Commission prohibition of restrictions against small cell deployments is particularly important because small cells are likely to have a prominent role in 5G deployments. As T-Mobile explained in its comments, small cell deployments will become increasingly more important relative to DAS as carriers transition their networks towards 5G. Sprint agreed, noting the frustrations it has had with utilizing its 2.5 GHz spectrum with DAS.[34/] All DAS networks

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32/ *See* Boingo Comments at 2-3; Crown Castle Comments at 13.

33/ Sprint Comments at 3-4 (explaining how it often has to pay large sums to use its unique spectrum bands on pre-existing DAS).

34/ Sprint Comments at 3-4.

will require upgrades to accommodate 5G technologies, and, in many cases, those upgrades will cost more than simply installing new small cells alongside existing infrastructure. In order to reduce the cost of, and speed up, 5G deployments, the Commission must ensure that carriers have the option of negotiating with property owners for the deployment of independent small cells, rather than allow first-mover carriers and third-party infrastructure managers to force subsequent carriers into unnecessarily costly and constraining DAS upgrades.

The Commission must also ensure that protecting transport access is a part of its MTE rules; no commenter disagreed with T-Mobile's explanation as to the importance of such access. Without cost-efficient access to transport facilities, access to an MTE's DAS or a carrier's right to deploy its own infrastructure will be useless in providing actual service to customers. In order for the Commission's rules to have the desired effect of reducing barriers to competitive service in MTEs, transport access must be ensured.

VI. THE COMMISSION SHOULD ENSURE OPEN ACCESS TO ROOFTOPS

The record shows that restrictive agreements covering access to rooftops limit carriers' ability to compete in the provision of broadband service to MTEs and surrounding areas. WISPA noted that such agreements prevent carriers from serving customers' needs and that exclusive-access agreements take the form of *de facto* exclusivity that limits choice and alters the competitive balance in favor of existing providers.[35/] Starry noted that rooftop deployments are often a necessity, and, without access, it is unable to provide service to its customers.[36/] Similarly, INCOMPAS expressed concerns about rooftop exclusivity agreements being used to

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35/ WISPA Comments at 22-23.

36/ Starry Comments at 10-11.

prevent competition,[37/] and CenturyLink noted that carriers often insert terms into agreements with property owners that prevent subsequent carriers from gaining access to rooftops.[38/]

In contrast, those who support these agreements fail to provide any valid argument for why such restrictions are necessary. Instead, they advance two empty justifications for continuing to prevent competitors from accessing MTE rooftops. *First*, they claim that safety and interference concerns justify limitations,[39/] but give no explanation for why carriers are unable to work together and with building owners as needed to ensure safe and non-interfering operations. Indeed, as T-Mobile and others noted,[40/] carriers are more than capable of doing so and have a history of such cooperation, and vague safety and interference concerns are not a justification for restrictive agreements covering MTE rooftops.

Second, proponents of rooftop access prohibitions claim that, because MTE rooftops are generally not used to serve the MTE itself, as opposed to the surrounding area, they should not be considered in this proceeding.[41/] But this is an unnecessarily restrictive approach. In fact, rooftops *are* used to serve MTEs: the record shows that fixed wireless providers often require access to an MTE rooftop in order to serve that location.[42/] The same is true of mobile wireless

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37/ INCOMPAS Comments at 18-19.

38/ CenturyLink Comments at 19-20

39/ *See* Crown Castle Comments at 10-11.

40/ *See* Starry Comments at 11 (explaining that "there is no safety or operational reason" to restrict rooftop deployments given their small size); WISPA Comments at 23 (noting that rooftop exclusivity agreements prevent competition even though rooftops can "safely accommodate multiple service providers").

41/ Crown Castle Comments at 10-11.

42/ *See* INCOMPAS Comments at 18-19 (explaining that rooftop exclusivity agreements are used by fixed wireless carriers to keep others from serving MTEs at which they have deployed); Starry Comments at 10-11 (explaining that its "business depends on our ability to place transceivers located on the roof of" the MTE it is serving); WISPA Comments at 22-23 (explaining that wireless providers cannot provide MTE service if they cannot access the building's rooftop).

carriers, especially when an MTE includes outdoor areas or multiple structures. In these situations, a rooftop deployment can provide coverage to a broad area including indoor and outdoor locations, making access to the rooftop the most effective way of deploying service to the MTE. Thus, restrictions on such access go to the heart of what is at issue in this proceeding. But even if it were true that rooftops are generally used to serve an area around an MTE, rather than the MTE itself, this does not diminish the importance of the Commission ensuring open access to them as a way to encourage and foster broadband deployment.

Instead of seeking to answer the question of exactly what kind of service is provided from a rooftop deployment, the Commission should look at agreements governing MTE rooftops the same way T-Mobile has urged that it look at agreements governing buildings' interiors: insofar as agreements between the property owner and the carrier or between the carrier and a third-party infrastructure operator include or rely on restrictive terms that limit the ability of other carriers to deploy infrastructure and provide service to customers, they are anticompetitive and not in the public interest, and carrier participation in them should be prohibited.

VII. THE COMMISSION HAS CLEAR AUTHORITY TO PROHIBIT ANTICOMPETITIVE INFRASTRUCTURE AGREEMENTS

The record in this proceeding shows that the Commission has ample legal authority to act to ensure greater service competition in MTEs. All of T-Mobile's proposals fall squarely within the agency's jurisdiction.

A. The Commission Has Authority Over Title II and VI Carriers, Regardless of Impacts on Non-Regulated Entities.

Despite protests to the contrary from commenters seeking to avoid competition,[43/] the Commission's authority over Title II and VI carriers is clear, and the Commission may regulate

43/ *See* National Multifamily Housing Council *et al*. Comments at 42-48, 83-84.

their conduct pursuant to that authority. Sprint noted that Sections 201 and 202 of the Communications Act permit the Commission to declare carrier practices that restrict other carriers' access to MTEs unreasonable,[44/] and INCOMPAS pointed out that the Commission's Section 201 authority includes prohibiting "anticompetitive contractual arrangements for the provision of communications services."[45/]

The Commission's authority is not diminished even though restrictions on Title II and Title VI may also affect property owners. Despite those potential indirect effects, the Commission has the power to prevent *carriers* from restricting *other carriers* from deploying equipment and serving customers through participation in restrictive transactions. The Commission routinely adopts rules based on its clear regulatory authority that may have an impact on unregulated parties. Indeed, its existing MTE rules already indirectly restrict the ability of MTE property owners to enter into certain agreements.[46/] The fact that there may be an impact on property owners does not strip the Commission of its authority to regulate.

If the Commission acts as T-Mobile and others have urged, property owners will still have all existing rights to profit from their properties and their investments; they will lose only the right to partner with carriers or third-parties in ways that restrict other carriers and suppress competition in the market for wireless services. Their rights would only be affected as they relate to regulated carriers directly or indirectly restricting other carriers' access. Property owners may still enter into any agreements (or no agreements), but carriers may not participate if the terms violate Commission rules.

44/ Sprint Comments at 10.

45/ INCOMPAS Comments at 25.

46/ *See, e.g.*, 47 C.F.R. §§ 64.2500, 76.200.

Property owners indicated that their interest in DAS and other carrier infrastructure is not maximizing direct rents for these systems, but ensuring service for their customers.[47/] If this is true, then the rules that T-Mobile proposes are consistent with their interests and will ultimately benefit them – by precluding carriers from taking advantage of exclusivity and other restrictive terms, property owners' customers will have access to competitive communications services.

B. The Commission has Authority Over State and Local Properties under Sections 253 and 332.

Commenters agree with T-Mobile that the Commission has authority over properties under the control of a State or local government entity under Sections 253 and 332 of the Communications Act.[48/] Contrary to the assertions of other commenters,[49/] the Commission made clear in its recent Declaratory Ruling and Order on State and local barriers to entry for broadband deployment that there is no basis in the Act for the purported distinction between governmental and proprietary functions for these provisions.[50/] Whenever a State or local entity acts in this area, it does so in a regulatory capacity and is subject to Sections 253 and 332.[51/] The Commission should therefore confirm that *no* property owned or controlled by a State or local

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47/ National Multifamily Housing Council *et al*. Comments at 11, 26, 75; Community Associations Institute Comments at 2.

48/ Sprint Comments at 7-9 (explaining how restrictive DAS agreements, whether or not using a third-party infrastructure manager, are "terms that prohibit competitive broadband investment in public venues" and are therefore prohibited by Sections 253 and 332 of the Communications Act); Uniti Fiber Comments at 6-7 (explaining problems with accessing publicly-owned MTEs and noting that "tenants of publicly-owned or -managed MTEs should have the same access to broadband service offerings as those located in privately-owned or -managed MTEs").

49/ Comments of the City and County of San Francisco Comments, GN Docket No. 17-142, 19-20 (filed Aug. 30, 2019).

50/ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 ¶¶ 92-97 (2018) ("*2018 Infrastructure Order*").

51/ *Id*.

government entity may be subject to a restrictive agreement of any kind, regardless of whether a third-party infrastructure manager is involved or whether it qualifies as an MTE.[52/]

C. The Commission's Authority in this Proceeding is Not Limited by Its Reclassification of Broadband as an Information Service.

Finally, the Commission's authority to implement rules to promote wireless access in MTEs is not changed by its 2017 reclassification of broadband as an information service.[53/] Regardless of whether the Commission would retain its authority under Section 201 of the Act over agreements and business practices that are not "just and reasonable" and that relate only to broadband service, very few broadband deployments are broadband-only. As the Commission has recognized, commercial wireless services are often commingled with broadband Internet access services, and commercial wireless networks retain components that are Title II regulated services.[54/] Thus, promoting their deployment and prohibiting anticompetitive business practices are squarely within the Commission's authority under Section 201 of the Act.

VIII. THE COMMISSION SHOULD EXPAND ITS DEFINITION OF MTEs TO INCLUDE LOCATIONS WHERE LARGE NUMBERS OF WIRELESS CUSTOMERS CONGREGATE

As T-Mobile's comments explained, the same issues presented by facilities currently defined as MTEs also exist in certain locations that are not defined as MTEs today. This includes sports and entertainment venues, resorts, and convention centers. T-Mobile

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52/ And the Commission should confirm that the prohibition against restrictive terms applies to existing agreements involving State or local governments. Those terms *already* violate Sections 253 and 332; the Commission would not be imposing any new prohibitions by confirming that. This approach is consistent with the Commission's 2018 Declaratory Ruling on State and local barriers to entry for broadband deployment interpreting these same provisions. There, the Commission declined to exempt existing agreements from its ruling. *2018 Infrastructure Order* ¶ 66.

53/ Public Knowledge Comments at 4-8.

54/ *See, e.g.*, *Restoring Internet Freedom*, Declaratory Ruling, Report and Order and Order, 33 FCC Rcd 311 ¶ 190 (2018) (continuing to apply its Section 224 and 332 regulations to commercial wireless infrastructure "including DAS or small cells" despite the reclassification of broadband).

demonstrated that the definition of an MTE should be expanded, at least for wireless access, to include those locations. While one commenter echoed these concerns,[55/] some dismissed this suggestion, but did not provide any substantive reasons for opposing the proposal.[56/]

As T-Mobile made clear in its comments, the nature of the wireless marketplace justifies a different definition for MTE for wireless competition rules. The Commission should therefore expand the definition of MTEs for purposes of wireless service to ensure that wireless carriers are able to effectively serve their customers wherever they are.

IX. COMMISSION PROHIBITIONS WILL NOT IMPACT PUBLIC SAFETY NETWORKS

Some commenters expressed concern that Commission regulation of MTE wireless deployments may affect the ability of property owners to satisfy their obligations with respect to the operation of public safety radios in their buildings.[57/] These concerns are unfounded. Property owners will retain full control over systems installed on their property and will be able to ensure compliance with all public safety obligations and responsibilities. Insofar as property owners require contractual provisions to enable the deployment of, or to protect, public safety radio systems, they will continue to be able to include them.

Indeed, adopting proposals to promote greater access to MTEs will *benefit* public safety by potentially introducing greater redundancy of networks within MTEs by allowing carriers to

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55/ *See* Sprint Comments at 1 (discussing the challenges of providing "large public venues" with wireless service and issues in such venues, rather than focusing its comments on MTEs).

56/ *See* Crown Castle Comments at 5-6. Crown Castle simply points to the Commission's explanation for not including such locations in its *wireline* competition rules, but makes no effort to explain why such exceptions should apply to its *wireless* competition rules. Boingo simply asserts that such locations are "far outside the scope of this proceeding." Boingo Comments at 8-9.

57/ *See generally* Comments of Government Wireless Technology & Telecommunications Association, GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of Safer Buildings Coalition, GN Docket No. 17-142 (filed Aug. 30, 2019).

avoid bottlenecks through the deployment of carrier-specific infrastructure. Forcing all carriers to use the same network infrastructure in an MTE increases the risk that there will be *no* service in an emergency situation, but if each carrier has installed its own system, then network sharing between carriers can increase the odds that emergency calls, whether from public safety entities or the general public, will connect.

X. CONCLUSION

The record in this proceeding makes clear that the Commission has both the justification and authority to act to prohibit carrier participation in anticompetitive agreements that restrict, rather than promote, the deployment of wireless broadband service to MTEs. Commenters across industries asked the Commission to prohibit carriers from utilizing first-mover advantage and monopoly power to prevent other carriers from offering services in MTEs, whether directly or through third-party intermediaries. Doing so will increase competition in the provision of wireless service to customers, protect property owners' rights, and benefit consumers across the country, whether or not they live or work in an MTE.

Respectfully submitted,

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